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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,703	02/04/2004	Michael K. Noggle	NOGGL.001A	3790
20995	7590	12/02/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			WONG, STEVEN B	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/771,703

Applicant(s)

NOGGLE, MICHAEL K.

Examiner

Steven Wong

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date Feb 4 2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Drinkert (D99,117). Regarding claim 1, Drinkert discloses a one-piece golf tee comprising a head and a tip and a stop therebetween that provides increased penetration resistance for the tee. The tee will inherently indicate a first depth of penetration when the stop engages the ground.

Regarding claim 2, the stops are marked by an increase in diameter.

Regarding claims 3 and 4, Drinkert provides additional stops of increased diameter.

Regarding claim 5, the limitations are met by Drinkert as claim 4 provides alternative language for the ribs where the tee may not actually comprise ribs and instead just be of increased diameter.

Regarding claim 8, the recited steps are an inherent method by which the golf tee of Drinkert would function when inserted into the ground surface.

3. Claims 1-5 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee (D453,810). Regarding claim 1, Lee discloses a one-piece golf tee comprising a head and a tip and a stop therebetween that provides increased penetration resistance for the tee. The tee will inherently indicate a first depth of penetration when the stop engages the ground. Note Figure 8.

Regarding claim 2, the stops are marked by an increase in diameter.

Regarding claims 3 and 4, Lee provides additional stops of increased diameter.

Regarding claim 5, the limitations are met by Lee as claim 4 provides alternative language for the ribs where the tee may not actually comprise ribs and instead just be of increased diameter.

Regarding claim 8, the recited steps are an inherent method by which the golf tee of Lee would function when inserted into the ground surface. Attention is directed to Figure 8 of Lee.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drinkert (D99,117). It would have been obvious to one of ordinary skill in the art to form the tee of Drinkert with the first and second stops at the distances recited in claim 6 in order to set the tee at a particular height. The particular distances are determined to be obvious lacking a showing of their criticality by a new and unexpected result.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (D453,810). It would have been obvious to one of ordinary skill in the art to form the tee of Lee with the first and second stops at the distances recited in claim 6 in order to set the tee at a particular height. The particular distances are determined to be obvious lacking a showing of their criticality by a new and unexpected result.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drinkert (D99,117) in view of Blosser (5,356,146). Blosser discloses that it is well known in the art of golf tees to provide markings along the shaft of the tee in order to indicate the particular depth that the tee is inserted into the ground. It would have been obvious to one of ordinary skill in the art to provide the tee of Drinkert with markings thereon in order to indicate to the user the depth of the tee in the ground surface.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (D453,810) in view of Blosser (5,356,146). Blosser discloses that it is well known in the art of golf tees to provide markings along the shaft of the tee in order to indicate the particular depth that the tee is inserted into the ground. It would have been obvious to one of ordinary skill in the art to provide the tee of Lee with markings thereon in order to indicate to the user the depth of the tee in the ground surface.

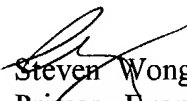
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Wong whose telephone number is 571-272-4416. The examiner can normally be reached on Monday through Friday 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven Wong  
Primary Examiner  
Art Unit 3711

SBW  
November 29, 2004